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12 Attorneys for Defendants
13 MASIMO CORPORATION and
14 MASIMO AMERICAS, INC.

15
16 IN THE UNITED STATES DISTRICT COURT
17 FOR THE CENTRAL DISTRICT OF CALIFORNIA

18 PHYSICIANS HEALTHSOURCE,
19 INC.,

20 Plaintiff,

21 v.

22 MASIMO CORPORATION, et al.

23 Defendants.
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) Case No. 8:14-cv-00001 JVS (ADSx)

) Hon. Judge James V. Selna

) **DECLARATION OF BENJAMIN**
) **A. KATZENELLENBOGEN IN**
) **SUPPORT OF MASIMO'S *EX***
) ***PARTE* APPLICATION TO**
) **STRIKE OR VACATE PHI'S**
) **MOTION FOR LEAVE**

1 I, Benjamin A. Katzenellenbogen, hereby declare:

2 1. I am a partner in the law firm of Knobbe, Martens, Olson & Bear,
3 LLP, counsel for Defendants Masimo Corporation and Masimo Americas, Inc.
4 (collectively, “Masimo”) in this action. I have personal knowledge of the
5 matters set forth in this declaration and, if called upon as a witness, would
6 testify competently thereto. I submit this declaration in support of Masimo’s
7 *Ex Parte* Application to Strike or Vacate.

8 2. Attached hereto as **Exhibit B** is a true and correct copy of an
9 email dated February 6, 2019, and timestamped 3:06PM, from myself to Ross
10 Good.

11 3. Attached hereto as **Exhibit C** is a true and correct copy of an
12 email dated February 6, 2019, and timestamped 5:55PM, from myself to Ross
13 Good.

14 4. Attached hereto as **Exhibit D** is a true and correct copy of a letter
15 dated February 7, 2019, from Ross Good to myself.

16 5. On February 8, 2019, I called counsel for PHI and explained the
17 bases for Masimo’s *ex parte* application. I told counsel for PHI that Masimo
18 would file the *ex parte* application on February 8, 2019, unless PHI withdrew
19 its pending motion for leave to amend and complied with its meet-and-confer
20 obligations under Local Rule 7-3. Counsel for PHI refused to withdraw its
21 pending motion for leave to amend. Counsel for PHI asked Masimo if it would
22 stipulate not to do anything that would moot Geismann’s claims. I informed
23 PHI’s counsel that concerns about mootness did not excuse PHI from its
24 obligation to comply with the Local Rules. I told PHI’s counsel that if there
25 were specific actions PHI wanted to ask Masimo to refrain from doing,
26 Masimo would consider them. PHI’s counsel declined to identify anything
27 PHI specifically wanted Masimo to refrain from doing. Counsel for PHI also
28 refused to explain why PHI thought it would be easier for Masimo to moot

1 Geismann's claims if PHI complied with the Local Rules and withdrew its
2 Motion. I asked counsel for PHI if there was anything else to discuss, and if
3 PHI would oppose the *ex parte* application. Counsel for PHI said there was
4 not, and PHI would decide whether to oppose after PHI reviewed the
5 application.

6 I declare under penalty of perjury under the laws of the United States that
7 the foregoing is true and correct.

8 Executed on February 8, 2019 at Irvine, California.

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10 /s/ Benjamin A. Katzenellenbogen
11 Benjamin A. Katzenellenbogen
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